

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION**

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RUSSELL, et al.	)	
	)	
	)	
Plaintiffs,	)	
	)	Case No. 4:19-cv-00226
v.	)	(Class Action)
	)	The Honorable Lee H. Rosenthal
HARRIS COUNTY, TEXAS, et al.	)	U.S. District Judge
	)	
Defendants.	)	
	)	

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**PLAINTIFFS' RULE 41(a)(2) MOTION FOR DISMISSAL OF THE  
CRIMINAL DISTRICT COURT JUDGES AS DEFENDANTS**

Plaintiffs have agreed to voluntarily dismiss with prejudice the 23 Felony Judges as Defendants to this lawsuit in exchange for the Judges who appealed dismissing their appeal, which is currently pending in the Fifth Circuit. *See* Dkt. 327 (Felony Judges' Notice of Appeal). Rule 41 is the appropriate procedural vehicle for seeking dismissal of the Judges. Rule 41 sets the parameters for "Dismissal of Actions." Fed. R. Civ. P. 41. In the Fifth Circuit, the word "action" has been interpreted to "cover individual defendants—thus allowing plaintiffs . . . to use Rule 41(a) to dismiss individual defendants." *See Williams v. Seidenbach*, 958 F.3d 341, 345 (5th Cir. 2020) (*en banc*). Subsection (a)(2) permits a plaintiff to seek dismissal of a defendant "[b]y [c]ourt [o]rder." Fed. R. Civ. P. 41(a)(2). Accordingly, Plaintiffs file this Motion pursuant to Rule 41(a)(2), seeking a court order dismissing the Felony Judges, but ask that, for the time being, the Court not enter the Order until the Felony Judges have dismissed their appeal.

The County, Sheriff, and Judges Cornelio, Gray, Lacayo, Silverman, and Warren are unopposed to the motion. Undersigned counsel was unable to reach Judge Bell prior to filing. When asked for their position, the 17 Judges who are represented by the Attorney General's Office

stated as follows: "The felony judges are not opposed to an ultimate dismissal in this case. However, please do not make any representation that the felony judges have agreed to take any specific action upon the filing of the Rule 41. As we've discussed briefly, there are still a few outstanding questions as to the proper procedural vehicles before dismissal is granted including possibly seeking a vacatur of Judge Rosenthal's opinion."

Date: January 20, 2021

Respectfully Submitted,

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/s/ Elizabeth Rossi

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**CERTIFICATE OF SERVICE**

I certify that on January 20, 2021 a true and correct copy of this document properly was served on counsel of record via electronic filing in accordance with the USDC, Southern District of Texas Procedures for Electronic Filing.

*/s/ Elizabeth Rossi* \_\_\_\_\_

Elizabeth Rossi